

ITEM:

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SUBJECT:

Virginia L. Drake, Trustee, Drake Revocable Trust, Butte County

BOARD ACTION:

*Consideration of Two Administrative Civil Liability Orders*

- a. *Humboldt Road Burn Dump Area 8, APN 011-780-014, Butte County*
- b. *Humboldt Road Burn Dump Area 7, APN 011-780-018, Butte County*

BACKGROUND:

Virginia L. Drake, Trustee, Drake Revocable Trust (hereafter the Discharger), owns 50% undivided interest, James E. Simmons owns 25% undivided interest, and the Simmons Family Trust own 25% undivided interest in two parcels in the area known as the Humboldt Road Burn Dump in the City of Chico. These parcels contain lead and other waste constituents that at some locations exceed hazardous waste levels. The waste constituents pose a threat to human health and the environment, including waters of the state. The Regional Board ordered the Discharger and other persons to cleanup these parcels (Areas 7 and 8) by 15 August 2005.

On 13 February 2004, the Discharger submitted to Regional Board staff a notice of intent to submit a Remedial Action Plan to comply with Cleanup and Abatement Order No. R5-2003-0707 for Areas 7 and 8. On 15 March 2004, the Discharger submitted a monthly technical report committing to cleanup the Area 7 and 8 waste. Subsequently, the Discharger notified Regional Board and City of Chico staffs of its intent to remove the waste by summer 2004, if possible. On 28 July 2004, the Discharger notified Regional Board staff that it intended to immediately develop and submit a Remedial Design and Implementation Plan and seek permits from other agencies to allow remediation work to begin in spring 2005. On 10 September 2004, the Discharger notified James E. Simmons and the Simmons Family Trust of its intent to manage and obtain all necessary permits to clean up the Area 7 and 8 waste during summer 2005. The Discharger failed to obtain the permits and the cleanup has not occurred.

ISSUES:

The Discharger claims the City of Chico, James E. Simmons, and Simmons Family are, at least, equally responsible for failing to comply with the Regional Board orders.

For Area 7, did the Discharger, James E. Simmons, or the Simmons Family Trust violate the Regional Board orders? For Area 8, did the Discharger, James E. Simmons, or the Simmons Family Trust and the City of Chico violate the Regional Board orders? The Discharger made clear to staff that it had assumed responsibility to clean up Areas 7 and 8 on behalf of others, was authorized by the Simmons as part owners of the parcels to undertake cleanup, was in control of the cleanup activities as indicated by contact with permitting agencies, and had the financial ability to cleanup the Area 7 and 8 waste. The Discharger halted all cleanup related work at a point in time (April 2005) that precluded other parties from completing the work by 15 August and complying with the 2003 CAO.

RECOMMENDATION:

Adopt the proposed orders.

Mgmt. Review \_\_\_\_\_  
Legal Review \_\_\_\_\_